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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Closed Captioning and Video Description of
Video Programming

MM Docket No 95-176

COMMENTS OF MEDIA CAPTIONING SERVICES

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Media Captioning Services (MCS) is pleased to provide comments to the FCC re. proposed regulations to be implemented for closed captioning. The FCC should be commended for soliciting comments on a number of incisive issues in its Proposed Rulemaking for Closed Captioning.

We will comment on the following issues:

- I. Proposed Timetable for Implementation
- II. Standards for Accuracy and Quality
- III. Determination of Undue Burden Exemptions
- V. Impact on Small Business
- VI. Enforcement and Compliance Issues
- VI. Closing Comments

I. Proposed Timetable for Implementation

The FCC's eight year transition period is a reasonable period, provided that video programmers currently providing in excess of the current proposed level of captioning maintain their current level of captioning. In paragraph 46 of its Notice, the Commission remarked that the level of captioning by some providers exceeds the requirements proposed in the transition schedule. We believe the Commission must require that the level of captioning in place as of January 17, 1997, the release of the Notice of Proposed Rulemaking, be maintained, and that such level of captioning will be the basis for computation of the level of captioning for compliance with the transition rules for the following reasons:

- a. The Commission might expect, and hope, that the level of captioning provided by video programmers who already exceed the minimum proposed levels will be maintained throughout the proposed transition period, but that may not be the case should video programmers desire to change the mix of their captioned programming. There have already been two instances noted on the Internet of previously captioned programming, no longer being captioned.
- b. Video programmers who have done "the right thing" by captioning as much of their programming to date as they deemed economically feasible, should not be unduly rewarded for providing access. They compete with newer networks, some of which

they may have an equity interest in, for capital, have the same need to maximize shareholder returns, and are competing in the marketplace for market share, advertising dollars, and talent.

Newer video programmers, which already have smaller gross operating margins, would, therefore, be placed at a competitive disadvantage vs. more established networks, broadcast or cable, which have captioning procedures in place, and which are providing captioning in excess of the proposed transition percentages.

c. Federal funding supports, as you have noted, 40% of the cost of all video programming, although for certain types of programming, the level of federal support may be higher. If the level of federal support were to diminish over the next four years, would video programmers already in compliance with the transition period percentages reduce their programming? The current transition regulations would seem to allow video programmers this flexibility, and such an effect could result in a net reduction of the current level of captioned hours, a result seemingly inconsistent with the intent of the rulemaking process..

The FCC, in paragraph 42, proposes to allow programmers significant discretion regarding what will be captioned, and we agree with this market-based allocation of resources approach. However, we believe the principle of allowing programmers to use discretion in determining which programming to implement captioning on can also be applied to the above problem, in order to achieve a level playing field in the allocation of costs for video programmers who already exceed captioning transition levels, and newer networks. We believe a market allocation approach, i.e., allowing video programmers to determine where advertising revenues may exist, where the costs of captioning in one market may be higher than another, is a key principle to implement. This may be accomplished by allowing, for the first two years of the phase-in schedule, video programmers to use an "aggregation approach" in computing the levels of closed captioning they are providing. In today's marketplace, video programmers are owned by appliance companies, entertainment conglomerates, and publishing companies. Broadcasters own cable properties, and cable companies may own a number of diverse networks. To encourage these entities to maintain the current

level of captioning, as well as reduce the number of undue burden exemption requests, the Commission might allow the following, for example:

a. A broadcaster which owns and operates local stations, as well as cable properties, might be allowed to redistribute (for purposes of computing compliance with the transition schedule) the total captioned hours of programming among all its networks. A network which owned and operated 12 stations, and two cable properties, would have 32,850 hours of captioning (2190 hours x 15) it would need to provide by August, 1999, to be in compliance. Excess hours over 2190 hours on any of these properties could be credited to, for example, a cable property, or another broadcast property, which may be providing a far lower number of captioned hours. A broadcaster, for example, owning two cable broadcast properties, each of which captions 1,000 hours, might allocate, for purposes of compliance with the transition requirements, extra hours above 2190 hours on certain owned and operated local stations, or, on the network itself, to one or both of the cable properties. In the previous example, a broadcaster would have the operational flexibility to determine which cable property it wishes to begin captioning on, based on demographic, budgetary, and captioning cost factors. If this flexibility is allowed all video programmers, cable and broadcast, through 1999, it will ease the economic burden on all programmers, create a disincentive for video programmers to reduce current levels of captioned programs, and/or not caption additional programs on networks where they already exceed transition period captioning requirements. In addition, the administrative burden on the FCC in processing undue burden requests will be eased, and this economic-based allocation by programmers will reduce price pressures for quality captioning services during the initial (2 year) transition period. All video programmers would still be required by year 4 to have 50% of their remaining programming captioned, unless they qualified for an undue burden exemption.

This principle could be applied to every major owner of broadcast and cable properties. We would recommend the above flexibility to allocate hours where transition captioning levels are currently exceeding the 2-year transition period requirements, that they be

available to all programmers during the 1997-1999 initial transition period. We would expect the two major results to be:

1. Lower the probability that the current level of captioned programming already provided will be reduced by video programmers already in compliance with the proposed transition requirements.
2. Allow for the more efficient allocation of capital by broadcasters to markets where the costs of captioning can be more readily supported, and where video programmers can have the flexibility to be more responsive to the needs of consumers.

Video programmers will have more flexibility to factor audience size, number of households passed, to better balance the needs and desires of consumers, with the economic impact of additional captioning.

II. Standards for Accuracy and Quality

1. We strongly agree with the FCC statements in paragraphs 106-117. We do not believe the FCC should promulgate standards with respect to non-technical issues, such as quality and accuracy. It is, however, essential to distinguish between benchmarks, and standards. By definition, a benchmark is a point of reference from which measurements are made. A standard is a definite level or degree of quality that is proper and adequate for a specific purpose. It has been inaccurately inferred that we believe standards are not necessary. That is not correct. In paragraph 106, the Commission referred to guidelines provided by commenters representing individuals with hearing disabilities. We agree with many of the guidelines. With respect to realtime captioning, we believe the benchmark, and, overriding objective, which must be met is functional equivalence. This principle, functional equivalence, is both the benchmark and minimum standard for realtime captioning. Realtime captioning must provide a level of functional equivalence available to the user of an audio track, be

contextually accurate, and provide a level of accuracy in transcription to enable the viewer dependent on captions to make use of the captioned data. Realtime captioning involves a process similar to simultaneous language translation. No two translators will provide precisely the same translation of a given speaker, but they must be contextually correct. With offline captioning, there is a benchmark available from which to set more precise standards, and that is an audio track, and/or a script derived from such an audio track. In the offline captioning process, given sufficient time, precise transcription, placement of captions, and synchronization can be more readily achieved. In the offline captioning process, the need for greater production efficiencies and/or volume should not take precedence over achieving the highest levels of spelling and contextual accuracy, since there is an already created audio track from which to benchmark the finished product.

In a marketplace economy, consumers will expect functional equivalence as the minimum standard for realtime captioning, and will communicate this to their video providers. We would expect that, during this transition period, major organizations representing individuals with hearing disabilities will assume an even greater role in educating all users of captioning about the captioning process, so that viewers can better assess whether the captioned programming is providing them the level of functional equivalence that should be reasonably expected. Viewers of captioning, through this education process, will be better equipped to appreciate the differences between realtime captioning, pre-scripted/offline captioning, and degrees of difficulty in captioning certain types of realtime broadcasts. Clearly, the realtime captioning of

a program such as "Crossfire," where three or more individuals are speaking simultaneously, oftentimes in excess of 250 words a minute, is more challenging than captioning a tennis match, and fundamentally different from pre-scripted national news programming, or late-night programming captioned offline, and live-displayed on repeat network feeds.

2. We do not believe the FCC's involvement in setting standards for the non-technical areas of captioning, other than defining benchmarks as noted above, is an efficient use of resources. Does the FCC have personnel in place who can distinguish between realtime captioning, live-display captioning, and/or who have stenographic skills?

3. We do not believe the FCC should establish minimum credentials for those involved in providing closed captioning.

If the FCC does not require credentials for all broadcast engineers (except chief operators) who are more directly involved with the broadcast spectrum, what precedent is there for setting minimum credentials for personnel involved in the non-technical process of closed captioning? Clearly, the FCC's objectives of reducing its administrative burden, and promoting more deregulation, would not be achieved by such regulation.

There are some captioning vendors who would support requiring an exam or credential for closed captioning, which they would train people for specifically, with the objective of asserting that their people meet the standard, or that their training assists individuals in achieving such credentials. There are sufficient professional credentials in the court reporting profession, such as the CSR, RPR, RMR (CM), CRR, to designate a level of

professional achievement. As with the S.A.T., none of the above credentials are predictors of success in the closed captioning industry.

Motivation, talent, proper theory, proper realtime training, and a commitment to excellence are far more important in producing quality realtime captioning than any professional certification.

If the FCC is interested in promoting a competitive, open marketplace, establishing such a credentialing process would suit certain interests, and hinder the FCC's intent in seeing an economically based, competitive marketplace for captioning develop. As the number of consumers with access to closed captioned televisions continues to grow, and as consumers become more educated about closed captioning, we expect the consumer to be capable of discerning high-quality closed captioning which, by definition, must provide all viewers with functional equivalence.

4. As the demand for closed captioning increases, we would expect further effort by professional court reporting organizations, at the state and national levels to incorporate realtime writing techniques as part of the credentialing process.

The FCC is correct, in paragraph 120, in noting that "imposition of such a standard would unnecessarily delay implementation of any closed captioning requirements without any evidence that only those passing a specific test are the best qualified to provide this service."

5. The implementation of mandatory captioning over the proposed transition period will have a major benefit in creating a base level of demand for closed captioning. The essence of a functioning marketplace for goods and services is a reasonable balance between supply and demand. Even though the Television Decoder Circuitry Act has

dramatically expanded the potential for more closed captioning through the hardware platform-television, the software side --video programming -- has not kept pace.

Closed captioning is regarded by too many video programmers as a variable cost in the production process. Without a robust demand for a service such as closed captioning, a competitive marketplace in which the cost of services are economically based will not develop. Without demand, the incentives for individuals to provide closed captioning services will not be met. There are many individuals with the realtime skills who cannot find opportunities for their skills, or who cannot make a reasonable living through closed captioning. If the FCC wishes to see a supply-and-demand, market-based closed captioning industry develop, which encourages competition, and provides reasonable pricing for closed captioning services to video programmers, it must: 1. remove barriers for entry into captioning for individuals by not imposing unnecessary credentialing, 2. Establish thresholds for undue burden exemptions according to a quantitative process we will suggest later, that will assist in establishing a base level of demand for captioning over a transition period, to meet the consumers' desire for full video accessibility, while not imposing an unreasonable operating burden on the video programmer. If video programmers want competitive pricing for captioning services, then they must accept a demand/supply based market for such services. Video programmers must be willing to accept the reality that closed captioning is no longer a variable cost in the production process, but must be factored in their cost of goods sold as a fixed cost. By creating a base demand for closed captioning, all captioning firms will be able to create a core of trained staff, whom they can fairly compensate, and meet the quality requirements of consumers.

III. Considerations in the Determination of Undue Burden.

As noted above, most of the largest video programmers are owned by large, publicly-owned corporations, who are generally in a different business than broadcasting or cable. These publicly owned businesses have, as a core business objective, the maximization of shareholder value, by increasing profits through some targeted percentage of expense reduction, and revenue growth. The capitalized value of the increased income stream is reflected in higher share prices, and this is a major factor in executive compensation. Imposing additional costs of doing business on such corporations will, naturally, provoke a hesitance on the part of all such corporations, who will seek exemptions from such a requirement on the basis of undue burden. However, all corporations, if required to incur a cost will seek value, when incurring the cost, from the goods or services it purchases. There is a misconception that some captioning companies continue to disseminate to consumers, programmers, and the FCC, that higher quality is achieved through higher cost. This is patent nonsense. High quality and low cost are not mutually exclusive. If high quality could be obtained through high cost, Toyota would never have achieved its market penetration in the U.S. auto market. Also, if value were unimportant to the consumer, then Wal-mart would not have achieved its market penetration in retailing in the U.S. There are many other examples of large and small companies who, through the combination of principled cost management, the application of quality-control procedures, and greater efficiencies in their product production and distribution processes, have been able to offer the consumer high value -- the optimum combination of high quality and low cost.

To ease the administrative burden on the FCC in evaluating undue burden exemption requests, we would suggest the FCC use a weighted-average ranking system to determine whether such an exemption should be granted to a programmer.

We would suggest the FCC publish a chart, using a weighted-average scale, on their web page, which programmers would download electronically, and upload their filing statement to an e-mail address set up by the FCC. A sample of such a scale follows:

Threshold criteria

In the period 1997-99, a score of 4 or higher will qualify for an undue burden exemption.

In the period, 1999-2001, a score of 5 or higher will qualify for undue burden.

In the period 2001-2003, a score of 6 or higher will qualify for undue burden.

weighting variables:

1. market served	.20
2. direct impact on public health, welfare, safety	.20
3. cost of captioning as percent of combined advertising/subscription revenue or production budget	.30
4. financial resources of video programmer	.20
5. percentage of programming captioned currently	.10

market served	assigned factor
a. 15 million or greater	2
b. 4-10 million	4
c. 500,000-4 million	6
d. 100,000-500,000	7
e. less than 100,000	8

2. direct impact on public health, welfare safety	
a. 24 hours national news	2
b. 25% or less news programming	5
c. educational programming	4
d. entertainment/syndicated programming	2
e. 50% or greater sports programming	5

3. cost of captioning as percent of combined advertising/subscription revenue or production budget

- | | |
|--------------------|---|
| a. greater than 5% | 6 |
| b. 3-5% | 5 |
| c. 2-3% | 4 |
| d. 1-2% | 2 |
| e. less than 1% | 1 |

4. financial resources of programmer

- | | |
|---|---|
| 200 million or greater | 3 |
| 50-200 million gross annual revenues | 4 |
| 3-50 million gross annual revenues | 5 |
| 3 million or less gross annual revenues | 7 |

5. percentage of programming currently captioned

- | | |
|-------------------|---|
| a. 25% or greater | 7 |
| b. 10-15% | 5 |
| c. 0-10 | 1 |

Therefore, using the above model, a company whose programming reaches over 10 million individuals, providing 24-hour-a day newscasts, with a cost of captioning between 1-2% of its news production budget, owned by a company with \$200 million or greater in gross annual revenues, which is captioning over 25% of its programming within the first two years of the transition, would score 2.7, and not qualify for an undue burden exemption. Conversely, a regional sports programmer, serving 2 million viewers, with a 2-3% cost of captioning as a percent of combined advertising and subscriber revenue, with \$40 million in gross annual revenues, and 10% of its current programming captioned, would generate a weighted score of 4.9, qualifying for an undue burden exemption in the period 1997-1999, but not in 1999-2001 if there were no changes in its economic condition, or the threshold number set to qualify for an undue burden exemption. The Commission could reset the threshold weighted average every two years, or rebalance the weightings of the variables.

All video programmers seeking an undue burden exemption would have their petition posted on the FCC web page for 30 days. Any interested party who questioned the basis for the video programmer's undue burden exemption filing could also file their protest to an e-mail address set up by the FCC. The above weighted average model is

designed to reduce the administrative burden to the FCC by pre-qualifying parties interested in obtaining an undue burden exemption.

V. Impact on Small Business

Some companies in the captioning industry have asserted that because there are over 100 companies in this industry, that the captioning industry is a highly competitive industry. While there is price competition in this industry, as in any industry, the closed captioning industry is not a price-efficient industry.

Efficient markets are characterized by small spreads, or differentials, between bid and asked prices, and relatively small price differentials for comparable goods and services. Over 98% of all companies in the closed captioning industry would be classified, using the FCC's terminology, as very small businesses, with less than \$ 3,000,000 per year in revenue. The majority of these companies do not have the marketing staff in place to solicit closed captioning business, let alone find sponsors. It is essential that the FCC require that video programmers utilize very small businesses, with an emphasis on diversity, to include the use of woman-owned businesses, to provide a minimum of 25% of realtime captioning requirements under this proposed rule-making. Captioning should be awarded to companies based on price and quality, not on their ability to raise funding for programmers, so that programmers do not have to incur the cost of captioning. One major reason the closed captioning industry has developed along oligopolistic lines has been the success of nonprofits engaged in substantially the same businesses as for profits, and one or more for-profit companies, in finding funding for broadcast and video programmers to defer some of the costs of captioning.

Captioning companies should be concerned with marketing their services at cost-efficient prices, and providing quality services, instead of devoting precious resources to "marketing," which often is construed as fund-raising, or finding sponsors to provide funding. The consumer will be better served if a core percentage of realtime captioning is provided by cost-efficient, quality-oriented, very small business providers, who can evolve into mature businesses, as the demand for their services increases.

Higher unit costs, than would exist in an efficient market, have been incurred by some broadcast and cable video programmers, who will pay higher costs, on the presumption they are receiving greater quality when, in fact, the reality is a portion of the cost has been incurred by an advertiser, other private sector funder, or the government, to absorb a portion of the unit cost. Very small businesses must be given every opportunity to compete in the marketplace, to provide realtime and offline captioning services.

Additionally, we would suggest the FCC require all video programmers to disclose the cost proposals they have received, and to determine if pricing proposals have been solicited from very small captioning providers. Clearly, the operational requirements of larger broadcast and cable companies, and the amount of programming they have to be captioned, might make it more efficient for them to rely on one or two larger vendors. However, some portion of their programming -- we would suggest 25% -- should be captioned by very small businesses, as defined above.

MCS can point to one major cable entity which does not use any very small business, to date, for captioning, and refuses to give our company an opportunity on the basis that,

when considered against "other benefits" in the overall business relationship, they (the cable network), at this time, are not concerned about paying higher prices for captioning. They have agreed that they have no problem with our quality. We wonder why shareholders of any company would not be concerned with obtaining better value, lower costs, and, ultimately, higher share prices.

In this respect, requiring that a portion of a programmer's video be captioned by very small businesses will assist in promoting demand for closed captioning services provided by smaller vendors, make the pricing mechanism more efficient, and, ultimately, result in more captioning, on a faster timetable, for the consumer. We would urge the FCC to refuse to grant an undue burden exemption to video programmers that do not propose to use, or who have not solicited bids from, very small captioning business concerns.

We would urge the FCC to support legislative initiatives, difficult though they be, in this period of budget austerity, for tax credits to programmers who use very small captioning concerns. We would urge your support for tax credits to video programmers using small business providers to caption in excess of 25% of their video programming, as follows:

- a. A tax credit of \$ 25,000 in year one (beginning in 1998 or sooner) to a video programmer, phased out over 5 years, for the captioning of local and regional video programming.
- b. A tax credit of \$ 300,000 per year in year one (beginning in 1998 or sooner) to a video programmer for captioning nationally televised broadcast or cable programming.

In paragraph 121, the FCC appears to approve of the use of the teleprompter, ENR method, in local captioning. While we agree that programmers should have flexibility in the programming they caption, and that the captioning methodology in realtime or offline should not be restricted, so as to maximize the goal of increasing captioning, we believe that the basis for allowing any method of captioning to be used is the principle of functional equivalence. As has been stated by ourselves, and other industry

participants, ENR captioning, if used exclusively, does not provide for the captioning of live spots, and, therefore, does not achieve functional equivalency for the viewer.

We would recommend the following to the Commission:

a. If more than 20% of a video programmer's production is not captioned, i.e. live, remote coverage, sports, then the programming will not meet the standard of functional equivalency, and the FCC should not count these as hours of programming which meet the proposed transition requirements.

We are raising this issue because there are many more local programming hours than national hours, and local broadcasters will be the largest market for small business captioning providers. Also, the FCC has noted that emergency programming be realtime captioned. It is essential the FCC recognize that realtime captioning, performed to the level of functional equivalency the market will expect, cannot readily be turned on and off, as demanded. No intelligent captioning company would assume the contingent liability to caption extended hours of realtime captioning, unless it already had a core business relationship with a local broadcaster, enabling the captioning company to have trained staff in place, familiar with local terminology, who are able to provide emergency captioning, when called upon, to the expected standard of functional equivalency. This is another argument in favor of requiring some portion of a local broadcaster's programming to incorporate realtime closed captioning. Clearly, if a broadcaster's programming mix provides extensive live or uncaptioned portions, it would not meet the test of functional equivalency, and, therefore, the ENR/teleprompter method should be used only if it affords complete functional equivalency to the viewer, or is supplemented with realtime captioning.

VI. Enforcement and Compliance Issues

The FCC should implement the following enforcement and compliance procedures:

1. video programmers seeking undue burden exemptions should be required to electronically file their requests to the FCC.
2. Such filings may be examined by the public for 30 days, so that the public can comment on such requests to the FCC.
3. In seeking undue burden exemptions, video programmers must provide cost data/proposals identifying the caption provider providing such cost estimates.
4. The FCC should post on its web page a list of caption problems which may occur, so that viewers may analyze the cause of captioning problems, to determine if such problems are the fault of defective equipment, weak signals, or cable company equipment.
5. The FCC should react to valid complaints of a technical nature, requesting comment from the local cable or broadcast programmer, national programmer, or caption company.
6. The FCC should investigate valid complaints received through electronic filing, or by mail. We have seen over the past year sporadic comments, some valid, and many malicious, proffered on the internet by uninformed or biased viewers. The FCC should make every effort to inform the viewing public of potential problems that can affect the captioning signal, by providing such a checklist on its web page, to identify the problem as soon as possible, and reduce the administrative burden on the FCC.
7. The FCC should work with industry consumer groups to obtain a broad range of input, to assess problems which captioning consumer groups may be experiencing, to solve such problems, and better assess the validity of consumer problems.
8. We believe video programmers, particularly those that impact on large regional areas, or nationally, should be limited to one undue burden exemption per network during the eight-year transition period.

VI. Closing comments

In closing, MCS would like to comment on additional areas of interest to the FCC:

- a. MCS does not believe mandatory captioning requirements should be implemented during the eight-year transition period for foreign language captioning. From our perspective, there are not, at this time, sufficient captioning personnel trained in non-English language stenographic skills who could provide realtime captioning. We would expect that, given demographic realities, video programmers might be able to implement pre-scripted offline captioning or subtitling for non-English language programming viewed in the U.S. The implementation of this level of non-English accessibility will be market driven, as certain programmers desire, as part of their marketing strategy, to provide programming in certain targeted native languages, i.e., Spanish.
- b. We do not believe that the costs of closed captioning can be embedded in advertising costs. Corporations are more willing to caption their commercials, since

they reason the expenditure can be measured in the form of a buyer's response. Non-product specific closed captioning is difficult for many companies, who have internal problems in measuring the impact of closed captioning on their customers, other than in terms of product sales. Some companies are interested in promoting good will through closed captioning sponsorship, and others will sponsor closed captioning where they perceive some strategic value in cultivating a new customer base by sponsoring captioning. Advertisers will caption their commercials, if they believe their sales can be augmented, or their product message is seen by a particular demographic group they are targeting.

We would expect advertisers on nationally televised events to have their advertisements captioned. This makes good business sense. Consistent with the FCC's market-oriented, less-regulatory approach toward the implementation of closed captioning requirements, we would suggest that the marketplace would react by not buying products of companies that do not caption their product messages. It would seem that consumers would -- through their collective buying power, and their advocacy organizations -- be as effective in having corporations caption their advertisements as any regulatory measure.

c. We urge the FCC to implement the above-noted recommendations, to ensure that the closed captioning industry can develop into a vibrant, efficient market which, with reasonable pricing, will dramatically expand captioning accessibility in the digital age.